

Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

May 10, 2013

Re: Center for Effective Government's Comment Concerning Proposed Transatlantic Trade and Investment Agreement, Docket No. USTR-2013-0019

The Center for Effective Government appreciates the opportunity to comment on forthcoming negotiations between the United States and the European Union on the Transatlantic Trade and Investment Partnership, also known as the “Transatlantic Free Trade Agreement” (TAFTA). The Center for Effective Government, a nonprofit research and policy organization, works to make government more responsive to the needs and priorities of the American people. For 30 years, we have focused on improving the federal regulatory system to guarantee it keeps American families and communities safe and secure.

We submit these comments because we are concerned about the U.S. Trade Representative’s and the High Level Working Group’s recommendation to TAFTA negotiators that the treaty focus on the reduction of “regulatory trade barriers and non-tariff issues.”¹ If the focus of “regulatory harmonization” is on a reduction of “trade irritants,” we fear TAFTA could weaken important standards that protect consumers, workers, and the environment.

If regulatory harmonization is pursued, the highest health and safety standards must be upheld; harmonization should create regulatory floors and improve protections for all treaty signatories.

TAFTA is being structured around regulatory reductions and rollbacks, euphemistically referred to “harmonization.”² The focus on harmonization is being aggressively pushed by the Transatlantic Business Council (TBC), an association whose members include some of the world’s largest corporations, from British Petroleum to Pfizer to British American Tobacco.³ Emphasis on regulatory harmonization would severely limit the United States’ ability to set sensible domestic safeguards. If TAFTA considers harmonizing regulation, it must do so in a way that creates a regulatory “floor” that allows treaty signatories to establish standards and safeguards that provide further protections to their citizens.

Not only should TAFTA negotiators avoid “harmonizing down” by decreasing health, safety, and environmental protections in either the U.S. or the EU, they should also actively seek to “harmonize up”

¹ “Final Report,” High Level Working Group on Jobs and Growth, Feb. 11, 2013. Available at: <http://www.ustr.gov/sites/default/files/02132013%20FINAL%20HLWG%20REPORT.pdf>.

² “Obama Administration Notifies Congress of Intent to Negotiate Transatlantic Trade and Investment Partnership,” Office of the U.S. Trade Representative, March 20, 2013. Available at: <http://www.ustr.gov/about-us/press-office/press-releases/2013/march/administration-notified-congrss-ttip>.

³ “Member Companies,” Transatlantic Business Council. Available at: <http://transatlanticbusiness.org/tbc-member-companies/>.

to help us compete in a smart, sustainable way. Harmonizing up can help boost the economies of all trading partners by fostering emerging, innovative industries of the future that will lead on clean energy, safer chemicals, and more efficient manufacturing processes.

One example of harmonizing up would be to bring the U.S. Toxic Substances Control Act (TSCA) in line with the EU's framework on Registration, Evaluation, and Authorization of Chemicals (REACH).⁴ In this case, such harmonization might require increasing the regulation of chemicals in the U.S. to meet higher European standards. This would better protect human health, encourage countries and industries to phase out dangerous chemicals and products, and spur innovation.

Many industry groups have advocated for mutual certification systems to be written into TAFTA. The Center for Effective Government is concerned that mutual certification will prevent the United States from adopting product safety standards more protective of American citizens than those of other nations. Mutual certification should not become an opportunity for negotiators to set a new regulatory ceiling behind closed doors and without input from the American people.

Because TAFTA will dramatically affect consumer, worker, and environmental protections, treaty negotiations must be made open to the public in a transparent and timely manner.

Given the magnitude of TAFTA and its implications on a range of non-trade policies and domestic safeguards, the Center for Effective Government supports the inclusion of a diverse set of stakeholders in treaty negotiations. The U.S. trade advisory system allows over 600 corporate advisors to view the negotiating texts and have direct access to the negotiators themselves,⁵ but public interest organizations and everyday Americans are currently shut out of the process and cannot view, advise, or comment on TAFTA negotiations.

Negotiating texts must be made available in real time to all stakeholders, whether they represent private industry or the public interest. Everyone must be provided an opportunity for meaningful input so negotiators are aware of and seek to protect the interests of workers, the environment, and consumers.

Going forward, the USTR must make efforts to meet with consumer protection, worker safety, and environmental advocates. A treaty that has the potential to dramatically re-write and reduce domestic regulations should not be written behind closed doors by unknown corporate lobbyists and unaccountable government negotiators. Transparency is crucial to ensuring TAFTA is a good deal for all Americans.

⁴ "US-EU High Level Regulatory Cooperation Forum," presentation by the American Chemistry Council, April 10, 2013. Available at: <http://www.uschamber.com/sites/default/files/grc/ACC%20Cefic%20HLRCF%20Joint%20Presentation%20April%202013.pdf>.

⁵ "Advisory Committees," Office of the United States Trade Representative. Available at: <http://www.ustr.gov/about-us/intergovernmental-affairs/advisory-committees>.

Any mechanism for investor-state dispute resolution (ISDR), like those included in the North American Free Trade Agreement (NAFTA), must not be included in TAFTA negotiations.

ISDR provides foreign investors means of “suing” sovereign governments in extra-legal tribunals that exist outside of any domestic legal framework. ISDR tribunals consist of a small collection of private attorneys that serve as “judges”⁶ has evolved into a mechanism by which private industry could sue governments over domestic laws it deemed “bad for business.”

The Center for Effective Government opposes the inclusion of ISDR in the TAFTA treaty. There is no legitimate reason to include such a system when all participating parties have mature, reliable legal systems for adjudicating disputes. Given TAFTA’s focus on non-tariff regulatory issues, ISDR would allow any foreign investor the “right” to sue a sovereign nation over any rule or regulation that imposes burdens on the investor. This could dramatically increase the cost of important clean air and water provisions and life-saving worker safety standards, and it could make federal, state, and local governments reluctant to adopt public protections. Sovereign states should have the political freedom and authority to set regulatory standards and safeguards without the threat of harassment from foreign corporations.

Overall, the Center for Effective Government is greatly concerned about the idea of surrendering regulatory protections in the name of “free trade.” As TAFTA negotiations proceed, decisions should be brokered in public, and industry interests should not override the public interest. Effective standards and safeguards provide health, safety, and financial security for all Americans and are a key component of a strong economy. Public protections ensure the American way of life and should not be downgraded.

⁶ “Profiting From Injustice,” Corporate Europe Observatory, Nov. 27, 2012. Available at: <http://corporateeurope.org/publications/profitting-from-injustice>.